

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSEPH MONTGOMERY EDWARDS,)	
Petitioner,)	
v.)	Civil Action No. 08-127 Erie
ERIK CHRISTENSEN,)	
Respondents.)	

MEMORANDUM ORDER

This petition for writ of habeas corpus was received by the Clerk of Court on May 1, 2008, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 7], filed on June 18, 2008, recommended that the petition be dismissed as moot in light of the fact that Petitioner was no longer incarcerated and had not pled any collateral consequences. Service of the Report and Recommendation was made on Plaintiff by certified mail and he was allowed ten days in which to file objections to the Report and Recommendation.

Since the filing of the Report and Recommendation, Plaintiff has filed Objections articulating the collateral consequences he allegedly suffers as a result of his conviction. Because of allegations in this new pleading, the dismissal of the petition is not appropriate on the grounds articulated by the Magistrate Judge.

However, the instant petition for writ of habeas corpus should be dismissed as the relief Petitioner seeks is not available in this federal court. In his petition, Petitioner requests that this federal court accept and decide his petition for relief pursuant to Pennsylvania's Post Conviction Relief Act. The PCRA petition was originally filed before Judge Shad Connelly of the Erie County Court of Common Pleas and was rejected by him as untimely under the requirements of the statute. See Doc. 8, page 2.

As Magistrate Judge Baxter footnoted in her Report and Recommendation, this

Court lacks jurisdiction over such an action arising under Pennsylvania's PCRA statute as that statute does not apply to federal courts. Additionally, on the face of the petition, Petitioner acknowledges that he has not exhausted his state court remedies which also requires that this petition be dismissed. See 28 U.S.C. § 2254(b); O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999) ("[S]tate prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process."). For both of these reasons, the petition should be dismissed.

AND NOW, this 16th day of July, 2008;

IT IS HEREBY ORDERED that the petition for writ of habeas corpus is dismissed and the "motion to file PCRA petition in federal court" [Doc. 5] is denied.

The Report and Recommendation [Doc. 7] of Magistrate Judge Baxter, filed on May 22, 2008, is not adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge